

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 690

*An Act to amend and reenact §§ 36-55.25, 36-55.26, and 36-55.30 of the Code of Virginia, relating to the Virginia Housing Development Authority acting as loan servicer for housing lenders.*

[H 1826]

Approved March 26, 2011

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 36-55.25, 36-55.26, and 36-55.30 of the Code of Virginia are amended and reenacted as follows:**

§ 36-55.25. Finding and declaration of necessity.

It is hereby declared: (i) that there exists within ~~this~~ *the* Commonwealth a serious shortage of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare and prosperity of the residents of ~~this~~ *the* Commonwealth; (ii) that it is imperative that the supply of residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased; (iii) that private enterprise and investment have been unable, without assistance, to produce the needed construction or rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families; (iv) that a concentration of persons and families of low and moderate income even in standard structures does not eliminate undesirable social conditions; (v) that the governing body of a city or county may in its discretion determine that it is necessary to the preservation of the financial viability of such city or county and the health, welfare and prosperity of its residents that the population of such city or county be maintained as economically mixed by providing housing for persons and families of other than low and moderate income in order to broaden the tax bases of such areas; (vi) that in providing sanitary and safe residential housing at prices or rentals which persons and families of low and moderate income can afford it may at times be necessary or desirable to provide housing for persons and families of other than low and moderate income; (vii) that it is critical to the success, prosperity and viability of areas being revitalized that financing be made available for nonhousing buildings that are incidental to residential housing for low and moderate income persons and families and other persons and families in order to provide products and services to those living in residential housing or that are necessary or appropriate for the revitalization of such areas or for the industrial, commercial or other economic development of such areas; (viii) that the financing of residential housing for low and moderate income persons and families and other persons and families may be appropriate to promote the industrial, commercial or other economic development of certain areas in a city or the county by inducing manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ix) that private enterprise and investment be encouraged both to sponsor land development and build and rehabilitate residential housing for such persons and families of low and moderate income and to build housing which will prevent the recurrence of slum conditions by housing persons of varied economic means in the same projects or area, and that private financing be supplemented by financing as provided in this chapter in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout Virginia.

It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford and to stabilize or recover an appropriate economic mix in certain areas of the Commonwealth the legislature finds that it is necessary to create and establish a state housing development authority for the purpose of encouraging the investment of private capital and stimulating the construction and rehabilitation of residential housing to meet the needs of such persons and families or to stabilize such areas through the use of public financing, to provide construction and mortgage loans and to make provision for the purchase of mortgage loans and otherwise.

It is hereby further declared to be necessary and in the public interest that such state housing development authority provide for predevelopment costs, temporary financing, land development expenses and residential housing construction or rehabilitation by private sponsors for sale or rental to persons and families of low and moderate income and others; further, to provide mortgage financing for the purposes of supplying sanitary and safe dwelling accommodations at rents, prices or other costs which such persons or families can afford or of stabilizing urban areas, including without limitation, long-term federally insured mortgages; further, in revitalization areas designated in or pursuant to

§ 36-55.30:2, to provide financing for nonhousing buildings that are incidental to residential housing financed or to be financed in such areas pursuant to this chapter for low and moderate income persons and families and for other persons and families or that are necessary or appropriate for the revitalization of such areas or the industrial, commercial or other economic development of such areas; further, to increase the construction and rehabilitation of low and moderate income housing through the purchase from mortgage lenders authorized to make loans in the Commonwealth of mortgage loans for residential housing for persons and families of low and moderate income in ~~this~~ *the* Commonwealth; further, to acquire, develop and own multifamily residential housing for occupancy by persons and families of low and moderate income; further, to provide technical, consultative and project assistance services to private sponsors; further, to assist in coordinating federal, state, regional and local public and private efforts and resources; to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages; ~~and~~ further, to promote wise usage of land and other resources in order to preserve the quality of life we value so highly in Virginia; *and further, to act as the loan servicer for a housing lender.*

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted, and that such activities serve a public purpose in improving or otherwise benefiting the people of ~~this~~ *the* Commonwealth; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

§ 36-55.26. Definitions.

As used in this chapter the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

"Bonds," "notes," "bond anticipation notes," and "other obligations" mean any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness issued by HDA pursuant to this chapter.

"City" means any city or town in the Commonwealth.

"County" means any county in the Commonwealth.

"Earned surplus" shall have the same meaning as in generally accepted accounting standards.

"Economically mixed project" means residential housing or housing development, which may consist of one or more buildings located on contiguous or noncontiguous parcels that the HDA determines to finance as a single economically mixed project, to be occupied by persons and families of low and moderate income and by other persons and families as the HDA shall determine.

"Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

~~"Federally insured mortgage" means a mortgage loan for land development for residential housing or residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage.~~

"Federal mortgage" means a mortgage loan for land development for residential housing or residential housing made by the United States or an instrumentality thereof or for which there is a commitment by the United States of America or an instrumentality thereof to make such a mortgage loan.

*"Federally insured mortgage" means a mortgage loan for land development for residential housing or residential housing insured or guaranteed by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such a mortgage.*

"HDA" means the Virginia Housing Development Authority created and established pursuant to § 36-55.27 of this chapter.

"Housing development costs" means the sum total of all costs incurred in the development of a housing development, which are approved by the HDA as reasonable and necessary, which costs shall include, but are not necessarily limited to: fair value of land owned by the sponsor, or cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing site or payments for the purchase of such properties; cost of site preparation, demolition and development; architecture, engineering, legal, accounting, HDA, and other fees paid or payable in connection with the planning, execution and financing of the housing development; cost of necessary studies, surveys, plans and permits; insurance, interest; financing, tax and assessment costs and other operating and carrying costs during construction; cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery and apparatus related to the real property; cost of land improvements, including without limitation, landscaping and off-site improvements, whether or not such costs have been paid in cash or in a form other than cash; necessary expenses in connection with initial occupancy of the housing development; a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor; an allowance established by HDA for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first two years of occupancy; in the case of an economically mixed project within a revitalization area designated in or pursuant to § 36-55.30:2, the costs of any nonhousing buildings that are financed in conjunction with such project and that are

incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial or other economic development of such area; the cost of such other items, including tenant relocation, if such tenant relocation costs are not otherwise being provided for, as HDA shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

"Housing development" or "housing project" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low or moderate income in need of housing and, in the case of an economically mixed project, other persons and families; such undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such offices, and other nonhousing facilities incidental or related to such development or project such as administrative, community, health, nursing care, medical, educational and recreational facilities as HDA determines to be necessary, convenient, or desirable. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

*"Housing lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association or building and loan association, mortgage broker, mortgage company, mortgage lender, life insurance company, credit union, agency or authority of the Commonwealth or any other state, or locality authorized to finance housing loans on properties located in or outside of the Commonwealth to persons and families of any income.*

"Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, corporations, cooperatives and condominiums, approved by HDA as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing development whether nonprofit or organized for limited profit subject to the regulatory powers of HDA and other terms and conditions set forth in this chapter.

"Land development" means the process of acquiring land for residential housing construction, and of making, installing, or constructing nonresidential housing improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal and treatment installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, other related pollution control facilities, and other installations or works, whether on or off the site, which HDA deems necessary or desirable to prepare such land primarily for residential housing construction within ~~this~~ the Commonwealth.

*"Loan servicer" means any person who, on behalf of a housing lender, collects or receives payments, including payments of principal, interest, escrow amounts, and other amounts due, on obligations due and owing to the housing lender pursuant to a residential mortgage loan or who, when the borrower is in default or in foreseeable likelihood of default, works on behalf of the housing lender with the borrower to modify or refinance, either temporarily or permanently, the obligations in order to avoid foreclosure or otherwise to finalize collection through the foreclosure process.*

"Mortgage" means a mortgage deed, deed of trust, or other security instrument which shall constitute a lien in the Commonwealth on improvements and real property in fee simple, on a leasehold under a lease having a remaining term, which at the time such mortgage is acquired does not expire for at least that number of years beyond the maturity date of the interest-bearing obligation secured by such mortgage as is equal to the number of years remaining until the maturity date of such obligation or on personal property, contract rights or other assets.

"Mortgage lender" means any bank or trust company, mortgage banker approved by the Federal National Mortgage Association, savings bank, national banking association, savings and loan association, or building and loan association, life insurance company, the federal government or other financial institutions or government agencies which are authorized to and customarily provide service or otherwise aid in the financing of mortgages on residential housing located in the Commonwealth for persons and families of low or moderate income.

"Mortgage loan" means an interest-bearing obligation secured by a mortgage.

"Multifamily residential housing" means residential housing other than single-family residential housing, as hereinafter defined.

"Municipality" means any city, town, county or other political subdivision of ~~this~~ the Commonwealth.

"Nonhousing building" means a building or portion thereof and any related improvements and facilities used or to be used for manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings other than residential housing.

"Persons and families of low and moderate income" means persons and families, irrespective of race,

creed, national origin or sex, determined by the HDA to require such assistance as is made available by this chapter on account of insufficient personal or family income taking into consideration, without limitation, such factors as follows: (i) the amount of the total income of such persons and families available for housing needs, (ii) the size of the family, (iii) the cost and condition of housing facilities available, (iv) the ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing, and (v) if appropriate, standards established for various federal programs determining eligibility based on income of such persons and families.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

"Residential housing" means a specific work or improvement within ~~this~~ *the* Commonwealth, whether multifamily residential housing or single-family residential housing undertaken primarily to provide dwelling accommodations, including the acquisition, construction, rehabilitation, preservation or improvement of land, buildings and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental, related, or appurtenant thereto. For the purposes of this chapter, medical and related facilities for the residence and care of the aged shall be deemed to be dwelling accommodations.

"Single-family residential housing" means residential housing consisting of four or fewer dwelling units, the person or family owning or intending to acquire such dwelling units, upon completion of the construction, rehabilitation or improvement thereof, also occupying or intending to occupy one of such dwelling units.

§ 36-55.30. Powers of HDA generally.

The HDA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. Sue and be sued in its own name;
2. Have an official seal and to alter the same at pleasure;
3. Have perpetual succession;
4. Maintain an office at such place or places within ~~this~~ *the* Commonwealth as it may designate;
5. Adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry into effect the powers and purposes of HDA and the conduct of its business;
6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law;
8. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities to effectuate the purposes of this chapter;
9. To enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development or residential housing, or land improvement; to enter into agreements with the federal government or other parties for the provision by the HDA, or any entity or fund owned or sponsored by or related to the HDA, of services and assistance in the restructuring or modification of debt or subsidy, or in the improvement of the financial or physical condition, of any housing development or residential housing, including without limitation any housing development or residential housing owned, financed or assisted by the federal government or financed by a mortgage loan insured by the federal government, which agreements may provide for the indemnification by the HDA of the federal government or other parties against liabilities and costs in connection with the provision of such services and assistance if such indemnification is determined by the executive director to be in furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification thereunder to a stated dollar amount and notifies the federal government or other parties that the full faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation to indemnify the federal government or other parties under such agreement; to operate and administer

loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency thereof or any municipality involving land development, the planning, development, construction or rehabilitation of housing developments and residential housing, the acquisition, preservation, improvement or financing of existing residential housing or other forms of housing assistance for persons and families of low and moderate income, however funded; and to operate and administer any program of housing assistance for persons and families of low and moderate income, however funded;

10. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to HDA, upon which such aid, grants, contributions and cooperation may be made, including, but not limited to, rent supplement payments made on behalf of eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;

11. To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the United States or of ~~this~~ *the* Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;

12. To provide advice and technical information, including technical assistance at the state and local levels in the use of both public and private resources to increase low-income housing resources for the disabled;

13. To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

14. To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;

15. To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe and to create insurance funds and form corporations for the purpose of providing mortgage guaranty insurance on mortgage loans made or financed by HDA pursuant to this chapter;

16. To invest its funds as provided in this chapter or permitted by applicable law;

17. To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;

18. Subject to the requirements of any agreements with bondholders or noteholders, to consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, contract or agreement of any kind to which HDA is a party;

19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges where, by reason of other income or payment from any department, agency or instrumentality of the United States or ~~this~~ *the* Commonwealth, such reductions can be made without jeopardizing the economic stability of housing being financed;

20. To procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or an authority, including the power to pay premiums on any such insurance;

21. To make and enter into all contracts and agreements with mortgage lenders for the servicing and processing of mortgage loans pursuant to this chapter;

22. To establish, and revise from time to time and charge and collect fees and charges in connection with any agreements made by HDA under this chapter;

23. To do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied;

24. To invest in, purchase or make commitments to purchase securities or other obligations secured by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land development or residential housing for persons or families of low or moderate income;

25. To acquire, develop and own multifamily residential housing as hereinafter provided;

26. To enter into agreements with owners of housing developments eligible for federal low-income housing credits as hereinafter provided in this chapter; ~~and~~

27. To exercise any of the powers granted by this chapter for the purpose of financing an economically mixed project and, if such project is within a revitalization area designated in or pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such governing body to be necessary or appropriate for the revitalization of such area or for the industrial, commercial, or other economic development of such area; provided that a capital reserve fund shall not be created for any such financing pursuant to § 36-55.41; *and*

28. *To make and enter into contracts and agreements to act as the loan servicer for a housing*

*lender on properties located in or outside of the Commonwealth to persons and families of any income.*